

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

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SO. DIST. OF GA.

KENNETH NEAL RADFORD,)
)
 Movant,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)
)

Case No. CV416-144
CR408-082

REPORT AND RECOMMENDATION

Petitioner Kenneth Radford, proceeding *pro se*, moves for a second time under 28 U.S.C. § 2255 to vacate the Armed Career Criminal Act (ACCA) enhancement applied to his 2009 sentence for possession of a firearm by a convicted felon. His motion was denied, and the Court declined to issue a Certificate of Appealability. Docs. 58 (report and recommendation denying motion), *adopted*, doc. 64. Radford appealed anyway, docs. 66-67, and he has asked this Court for permission to proceed with his appeal *in forma pauperis*. Doc. 67.

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); *see* Fed. R. App. P. 24(a)(3) (trial court may certify that

appeal of party proceeding *in forma pauperis* is not taken in good faith “before or after the notice of appeal is filed”). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) (a claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless); *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (an *in forma pauperis* action is frivolous and, thus, not brought in good faith, if it is “without arguable merit either in law or fact”).

The Court reiterates its prior ruling on the merits in advising that Radford’s § 2255 motion should be denied and no Certificate of Appealability should be issued. *See* Doc. 58. Movant’s arguments that that he no longer qualifies as an Armed Career Offender after *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015) and *Mathis v. United States*, 579 U.S. ___, 136 S. Ct. 2243 (2016), have been considered and denied. Docs. 58, 64. There are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. 28 U.S.C. § 1915(a)(3). *See Neitzke*, 490 U.S. at 327; *Napier*, 314 F.3d at 531.

Thus, the Court should **DENY** movant's application for *in forma pauperis* status on appeal.

SO REPORTED AND RECOMMENDED, this 9th day of
November, 2016.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA